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No. 88-607

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1988

JOSEPHINE WEIGNER,

Plaintiff-Petitioner,

-against-

THE CITY OF NEW YORK,

Defendant-Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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December 12, 1988

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

Whether the City's practice of notifying property owners of the pendency of a tax lien foreclosure proceeding involving their property by ordinary first-class mail, in addition to notice by publication and posting, is violative of due process?

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RESPONDENTS' BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

COUNTER-STATEMENT OF THE CASE

(1)

Plaintiff-petitioner ("petitioner") commenced the instant action against the City of New York alleging constitutional violations and other improprieties in connection with the City's tax foreclosure action against her property in Jamaica, Queens, New York, and the City's subsequent denial of petitioner's

application for release of the City's interest in the property. The United States District Court, Eastern District of New York (Bramwell, J.), granted summary judgment in favor of the City and dismissed the action. The United States Court of Appeals for the Second Circuit, with one Judge dissenting, affirmed. The Court held, inter alia, that notices of commencement of tax foreclosure actions sent by first-class mail pursuant to New York City's Administrative Code satisfied a property owner's right to due process.

(2)

In 1962, petitioner acquired 14 vacant parcels of land in South Jamaica, Queens, New York. Beginning in 1977, petitioner failed to pay taxes on the subject properties. On October 1, 1981, the City commenced an in rem tax foreclosure action against all real property in Queens on which

real estate taxes had not been paid for a year or more. Petitioner's 14 tax delinquent parcels were among the 5,229 properties included in this action.

The New York City Administrative Code, title 11, chapter 4 (formerly chapter 17, title D), sets forth the procedures that the City follows in foreclosing on real property by reason of tax delinquency. Real property owners who wish to receive real estate tax bills, or to designate someone else to receive them, may file an "owner's registration card." Admin. Code, §11-416(a) (Lenz & Riecher 1986). In so doing, they automatically arrange for the tax bill recipient to be informed of the commencement of an action of foreclosure for tax delinquency. Admin. Code, §§11-406(c) and 416(c). Other persons having an interest in property, who wish to be informed of the commencement of an in rem foreclosure action

on the property, including owners who have designated others to receive the tax bills, may file an "in rem card." Admin. Code, §11-417(a). The filing of the in rem card, like the owner's registration card, ensures a mailing of notice to the requested address in the event the property is included in an in rem tax foreclosure action. Admin. Code, §11-406(c) and 417(b). The mailed notice is in addition to the notice by publication and posting mandated by Administrative Code, §11-406(a) and (d).

On October 11, 1981, pursuant to applicable provisions of the Administrative Code, notices of the commencement of the tax foreclosure action were sent to petitioner at her home in Florida by ordinary first-class mail.[1] The "Notice of Foreclosure"

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[1]The notices were sent with respect to 13 of (Footnote Continued)

sent to petitioner apprised "[a]ll persons having or claiming to have an interest in the real property" that was the subject of In Rem Tax Foreclosure Action No. 38, Borough of Queens, that an action to foreclose tax liens had been commenced against the parcels. The Notice advised that a list of the unpaid taxes was available for inspection in the office of the Commissioner of Finance, for which two telephone numbers were given, and that a final date of December 18, 1981 had been established for the redemption of

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(Footnote Continued)
the 14 parcels owned by petitioner. Petitioner was not mailed notice as to the 14th parcel because she failed to file an owner's registration card or in rem card with respect to that lot as she had for the other 13 parcels. However, the 14th parcel is a narrow strip of land of apparently less interest to petitioner and she acknowledged on appeal in the United States Court of Appeals for the Second Circuit that whatever ruling is made with respect to the 13 parcels for which notice was mailed should govern the 14th parcel (A-3, ftnt 1).

property. See Admin. Code, §11-407(a).[2] An accompanying form apprised petitioner that she was the "presumptive owner or lienor of one or more of the parcels mentioned" in the Notice of Foreclosure and listed the block and lot numbers of the property. The Notice of Foreclosure also specified that, if one failed to redeem the property or to answer the complaint he would be "forever barred and foreclosed" of any right or interest in the property "except for the remedies provided in Sections D17-7.0(c) and D17-25.0 [now sections 11-407(c) and 11-424] of the Administrative Code." Petitioner failed at that time either to redeem her properties or to answer the complaints.

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[2]The in rem proceeding is discontinued as to any parcel redeemed pursuant to Administrative Code, §11-407(a). See Admin. Code, §11-407(b).

Section 11-407(c) [formerly §D17-7.0(c)] of the Administrative Code, provides for the late redemption of property after the redemption date has passed, but prior to entry of a judgment of foreclosure. Property which is redeemed pursuant to said section is then withdrawn from the foreclosure action. Admin. Code, §11-413. In Rem Tax Foreclosure Action No. 38, Borough of Queens, was pending from late 1981 until March 1984. Petitioner did not seek to avail herself of the late redemption provision during that time. On March 6, 1984, a judgment of foreclosure was entered in Supreme Court, Queens County, and the City acquired title to all parcels listed therein, including petitioner's 14 parcels, pursuant to deed duly recorded on March 15, 1984.

Section 11-424 of the Administrative Code provides for the release of the City's

interest in property following a judgment of tax foreclosure by the City. An application for release must be made within two years from the date on which the City's deed was recorded. Admin. Code, §11-424(a). Under the provisions of section 11-424(f), a release application made within four months of the City's acquisition of the property "shall be granted", provided that the Corporation Counsel approves the application as to "form, timeliness and eligibility of the applicant" and further provided that the applicant pays all required amounts within 30 days of a request for payment. Since the City's judgment of tax foreclosure in this case was not entered until 1984, and its deed was recorded on March 15, 1984, petitioner had until July 15, 1984 to seek the mandatory release of her property. Admin. Code, §11-424(f). She failed to do so.

Section 11-424(g) of the Administrative Code provides that an application for release made after the four-month period, but within two years of the City's acquisition of the property, may be granted by the Board of Estimate, but that such release by the Board is discretionary. That gave petitioner until March 15, 1986 to apply for discretionary release.

On March 12, 1986, just three days short of the two-year discretionary release deadline, petitioner filed release applications with respect to each of her 14 parcels. During the review process, petitioner was informed that her case for a discretionary release was weak and she was encouraged to submit additional evidence in support of her application.[3] Petitioner thereafter submitted

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[3]Prior to action by the Board of Estimate, (Footnote Continued)

an affidavit stating that she "held the property for investment" and that "it became financially inexpedient for [her] to continue to pay the real estate taxes" because the value of the property had dropped. Petitioner's affidavit did not mention any future plans for the property.

(Footnote Continued)
release applications are reviewed by the Division of Real Property ("DRP") of the New York City Department of General Services which makes recommendations to the Acquisitions and Dispositions Committee ("A & D Committee"). The A & D Committee is a committee of the Board of Estimate, which, in turn, makes recommendations to the full Board of Estimate on real property matters. Some of the factors upon which the Board of Estimate bases its discretionary determination include: any possible City plans for property disposition, the reasons why the property became tax delinquent, whether the applicant has lost other properties for nonpayment of taxes, whether the release application is made toward the beginning or the end of the discretionary period, whether the applicant occupies the property or is an absentee owner and any future plans the applicant may have for the property.

On September 25, 1986, the Board of Estimate considered the matter. Petitioner, by her attorney, was given an opportunity to address the Board and present her arguments in favor of release. A DRP representative summarized the arguments against release including the fact that the sites were being considered as potential Affordable Housing Sites.[4] Based on the facts before it, and after hearing from plaintiff and the DRP representative, the Board of Estimate voted unanimously to deny the release of the properties.[5]

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[4]During its review, DRP learned that the subject properties were part of an assemblage within a "Housing Study" area on disposition hold by the Department of City Planning and that the sites had been submitted to the Mayor's Office as potential Affordable Housing Sites, deemed suitable for development because of their size, zone and extent of City ownership.

[5]Worksheets submitted to the Board of
(Footnote Continued)

(3)

Petitioner commenced the instant action on October 22, 1986. Her complaint alleged, inter alia, that she received inadequate notice of the foreclosure proceeding and that by denying her release applications, the Board of Estimate discriminated against her as an out-of-state resident and otherwise abused its discretion.

(Footnote Continued)
Estimate indicated that the taxes owed on the properties then totaled more than $30,000, that the estimated value of the properties was $183,000, that the property was not owner occupied, that petitioner had bought the property for investment purposes and had abandoned it, that the application was received two years after the judgment of foreclosure, that petitioner had no specific plans for the property and that the property was being considered as a possible Affordable Housing Site.

OPINIONS BELOW

District Court Opinion
668 F. Supp. 135 (1987)

The District Court granted summary judgment to the City and dismissed the complaint. The Court found that the City's notice provisions fully comported with due process because petitioner actually received notices of foreclosure and "[a]ctual notice of commencement of the proceeding is all due process required."[6] The Court held that

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[6]Although petitioner denied that she ever received legal papers or notices by certified mail, she admitted receiving "tax bills and other form letters" concerning overdue taxes on her Queens property. The District Court's finding that notices were received was limited to the 13 parcels as to which notices had been sent. See footnote 1, p. 4, supra. As to the 14th parcel, for which notice was not sent, because petitioner had not filed an owner's registration card or in rem card with respect to that parcel, the District Court held that petitioner's claim was barred by the two-year statute of limitations contained in Administrative Code, §11-412(c).

due process did not require that petitioner be given further notice of the recording of the deed or of her right to seek release.

In rejecting petitioner's equal protection claim, the District Court stated that petitioner had presented "not a scintilla of evidence" to support her allegation of discrimination due to her Florida residency. Additionally, the Court concluded that the Board of Estimate had acted "rationally and well within its discretion" in denying petitioner's release applications.

Second Circuit Opinion
852 F.2d 646 (1988)

(1)

In affirming the judgment of the Court below, the Court of Appeals for the Second Circuit, one judge dissenting, held that "notice sent by ordinary mail of the pendency of the tax lien foreclosure proceeding is all that the constitution requires", expressly rejecting petitioner's

claim that, at a minimum, due process requires notice by certified mail, return receipt requested, to property owners who risk tax lien foreclosure of their interests in real estate. In so holding, the Court followed the long line of cases that have held, in a wide variety of proceedings that threaten to deprive individuals of their property interests, that notice sent by ordinary mail satisfies the requirements of due process. Tulsa Professional Collection Services, Inc. v. Pope, __U.S.__, 108 S.Ct. 1340 (1988); Mennonite Board of Missions v. Adams, 462 U.S. 791, 800 (1983); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 319 (1950).

Also expressly rejected was petitioner's contention that, in order to satisfy due process, notice of a tax lien foreclosure must not only be mailed to a property owner but also must be received. The Court held that

"[p]articularly where mailing is supplemented by other forms of notice such as posting or publication, the risk of non-receipt is constitutionally acceptable." The Court noted that, in this case, in addition to mailing, the City also both published and posted foreclosure notices. Another reason for tolerating the small risk of non-receipt of first-class mail in this case was petitioner's own conduct in failing to pay taxes. The Court reasoned that the "well-known inevitability of taxes and the consequences of not paying them are themselves likely to alert a tax delinquent property owner to the possibility of foreclosure."

Lastly, the Court rejected petitioner's contention that the notice provided by the Administrative Code was constitutionally inadequate because she was never informed of entry of the foreclosure judgment or of the imminent lapse of her remedies of

mandatory and discretionary release. The Court stated that "due process only requires notice of 'the pendency of the action' and an opportunity to respond." The Court held that "the likelihood of the City proceeding against Weigner's property was so certain from the circumstances of her tax delinquency that additional written notices of deadlines to avoid foreclosure was unnecessary."

The Court found petitioner's other claims to be equally without merit.[7]

(2)

Judge Oakes dissented. Recognizing that his dissenting opinion "may be a little

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[7]Because it found that due process was satisfied with respect to the 13 parcels for which notices were sent, and because petitioner agreed that the disposition with regard to the 13 parcels should govern the 14th parcel, the Court declined to consider the statute of limitations issue.

in advance of its time", and also recognizing that this Court has never held that certified or registered mail, as opposed to ordinary first-class mail, is required to constitute actual notice, the dissent nevertheless held that

> "in light of both the evolving due process standards for adequacy of notice and the practical realities of being a postal patron in the late 1980s, I would take the further step of requiring that actual notice consist of personal service, registered or certified mail, or, at a minimum, of service by first class mail with a return envelope, postage prepaid and addressed to the sender, as specified in Fed. R. Civ. P. 4(c)(2)(c)ii §4(d).

The dissent also found the Administrative Code "release" provisions, which place the approval of certain applications (i.e., those filed outside the four-month mandatory release period) wholly within the discretion of the Board of Trustees, to be "totally arbitrary."

REASONS FOR DENYING THE WRIT

THE CITY'S PRACTICE OF NOTIFYING PROPERTY OWNERS OF THE PENDENCY OF A TAX LIEN FORECLOSURE PROCEEDING INVOLVING THEIR PROPERTY BY ORDINARY FIRST-CLASS MAIL, IN ADDITION TO NOTICE BY PUBLICATION AND POSTING, FULLY COMPORTS WITH DUE PROCESS. THE COURT OF APPEALS' DECISION SO HOLDING FOLLOWED APPLICABLE DECISIONS OF THIS COURT AND IS NOT IN CONFLICT WITH THE HOLDINGS OF ANY OTHER CIRCUIT.

(1)

In attacking the constitutionality of the notice provisions contained in New York City's in rem tax foreclosure statute, petitioner argues that due process requires more than notice by ordinary mail of the commencement of a tax foreclosure proceeding involving her property. She contends that where the property owner's name and address is known, notice by certified mail, with return receipt requested, is constitutionally required. Pet. at 25-26.

The Court of Appeals soundly rejected this proposition after a painstaking analysis

of the City's in rem notice provisions in light of applicable precedents of this Court. Because the Court's decision is wholly consistent with those precedents and because petitioner has failed to establish any special or important reason for the exercise of this Court's jurisdiction, the petition should be denied. Rule 17.

(2)

In Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), this Court recognized that before action is taken which will affect a person's interest in property, due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." The proper inquiry is whether the state acted reasonably in selecting means likely to inform persons affected, not

whether each property owner actually received notice. As long as the state employs means "such as one desirous of actually informing the [property owner] might reasonably adopt to accomplish [that purpose]," then it has discharged its burden. Id. at 315.

In Mullane, notice by publication of an action to settle the accounts of a common trust was held insufficient to inform the beneficiaries of the trust, whose names and addresses were known, of the pending action. This Court held that "[w]here the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency." Id. at 318. In so holding, this Court took the opportunity to note that mailing was an "efficient and inexpensive means of communication" (id. at 319) and

thus there was no tenable ground for dispensing with a serious effort to inform the income beneficiaries of the accounting "at least by ordinary mail to the record addresses (emphasis added)." Id. at 319.

In subsequent cases, this Court has adhered unwaveringly to the principle announced in Mullane. Thus, in the context of a wide variety of proceedings that threaten to deprive individuals of their property interests, this Court has consistently held that mailed notice satisfies the requirements of due process. See, e.g. Tulsa Professional Collection Services, Inc. v. Pope, ___ U.S. ___, 108 Sup. Ct. 1340 (1988) (notice to creditors in probate proceedings); Mennonite Board of Missions v. Adams, 462 U.S. 791, 799-800 (1983) (notice to mortgagee of tax foreclosure); Greene v. Lindsey, 456 U.S. 444, 455 (1982) (notice to public housing tenants of forcible

entry and detainees actions); Schroeder v. City of New York, 371 U.S. 208, 214 (1962) (notice of condemnation proceeding).

In Mennonite Bd. of Missions v. Adams, supra, 462 U.S. 791, this Court specifically applied Mullane's balancing test to real property tax sale proceedings. In Mennonite, this Court struck down the notice provisions of an Indiana in rem tax foreclosure statute because it failed to provide notice, other than notice by publication and posting, to a mortgagee with a recorded interest in the property. The Court held that, under the Due Process Clause of the Fourteenth Amendment (462 U.S. at 800):

> [n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party, whether unlettered or well-versed in commercial practice, if its name and address are reasonably ascertainable (emphasis omitted).

Thus, the county was constitutionally obliged to notify a mortgagee of a pending tax sale affecting its interest in the property, an obligation which this Court held "'the mailing of a single letter would have discharged.' " Id., quoting Schroeder v. New York City, 371 U.S. at 214.

Petitioner has not shown that notice by ordinary first-class mail is not "reasonably calculated" to afford notice.[8] Indeed this Court, in Mennonite, referred only to the need for "notice by mail." Id. at 462. See also, Tulsa Professional Collection Services v. Pope, supra, ___ U.S. ___, 108 S. Ct. at 1340 ("We have repeatedly recognized that

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[8]Jurisdiction in the underlying tax foreclosure action was in rem, obtained by virtue of the subject properties' presence within the state. Service of a summons on property owners was, therefore, unnecessary. See Civil Practice Law and Rules, §304, Practice Commentary C304:1; and §301. (McKinney 1978 and Supp. 1988).

mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice"); Greene v. Lindsay, supra, 456 U.S. at 455 ("notice by mail may reasonably be relied upon to provide interested persons with actual notice of judicial proceedings"); Mullane, supra, 339 U.S. at 319 (mails are recognized as "efficient and inexpensive means of communication", this Court expressly sanctioning notice by ordinary mail); Gardner v. City of Columbus, Ohio, 841 F.2d 1272, 1279 (6th Cir. 1988) (notice to parking violators by affixing ticket to car windshield in conjunction with ordinary mail notice advising the owner of the infraction and implications of failure to answer does not violate due process); The Goodyear Tire & Rubber Co. v. Ruby, 312 Md. 413, 540 A.2d 482, (1988) (service by first-class mail adequate to apprise former husband of

ex-wife's proceedings seeking earnings lien for enforcement of child support). Petitioner has not cited a single case where a court required that notice be sent by certified mail.[9]

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[9] McCann v. Scaduto, 71 N.Y.2d 164, 524 N.Y.S.2d 398, 519 N.E.2d 309 (1987), does not impose a constitutional requirement of certified mailing. In McCann, the Court of Appeals held that Nassau County's tax foreclosure procedures violated due process. In contrast to the City's notice provisions, Nassau County's Administrative Code provided for notice to property owners of a tax lien sale by publication only. After the sale, the purchaser of the tax lien was required to inform the property owner of his redemption rights by certified mail, return receipt requested. The Court of Appeals held that this statutory scheme was violative of due process because the initial tax sale was a substantial deprivation of property that required mailed or "actual" notice as opposed to published or "constructive" notice to property owners whose addresses were known. Id., 71 N.Y.2d at 177, 524 N.Y.S.2d at 403-04, 519 N.E.2d at 313-15 (citing Mennonite Board of Missions v. Adams, supra). It is clear that "actual" notice means notice sent to the recipient, as opposed to published notice. Id. 71 N.Y.2d at 174, 524 N.Y.S.2d at 402. Nowhere does

(Footnote Continued)

While notice by certified mail, return receipt requested, may have certain advantages, means of notice beyond those reasonably calculated to reach interested parties are not required by due process. Mullane, supra, 339 U.S. at 313-14, 317-18.[10]

Nor does due process require actual receipt of notice that is properly mailed. " 'Now and then an extraordinary case may turn up, but constitutional law like other mortal contrivances has to take some

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(Footnote Continued)
the opinion suggest that "actual" notice means notice that is in fact delivered, much less notice by certified mail, return receipt requested.

[10]Of course, a possible disadvantage of certified mail, return receipt requested, is that one who is intent on avoiding notice can refuse to sign for it, or can be unavailable when delivery is attempted and then fail to claim it at the post-office. See, e.g., Marcus v. Ambach, 136 AD2d 778, (3rd Dept. 1988).

chances, and in the great majority of instances no doubt justice will be done' ". Mullane, supra, 339 U.S. at 319, quoting Blinn v. Nelson, 222 U.S. 1, 7 (1911). See also, Schroeder v. City of New York, supra, 371 U.S. at 214 (City's duty to notify property owner of condemnation proceeding was "an obligation which the mailing of a single letter would have discharged" (emphasis added).

Where mailing is supplemented by other forms of notice such as publication and posting, as in this case, the small risk of non-receipt is even further reduced.

(3)

Under the applicable precedents discussed above, petitioner received all the process she was due. City records reveal that on October 1, 1981, notices of tax lien foreclosure were sent to petitioner at her Florida address by ordinary first-class mail.

In addition, notice was effectuated by publication and posting pursuant to applicable Administrative Code provisions.

The fact that petitioner now denies that she received the notices is irrelevant in assessing the constitutional validity of the City's in rem notice provisions.[11] As properly noted by the Court of Appeals in this case, the small risk that the notice sent by first-class mail would not arrive is acceptable for two reasons. First, the

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[11]In the District Court, while denying that she received "proper notice", petitioner conceded that she received "some tax bills and other form letters from the City of New York." The notices of foreclosure, it is to be noted, were accompanied by form letters. It is significant that the notices were sent to petitioner's home address that she herself provided on owner registration cards filed with the Commissioner of Finance and the notices were never returned undelivered. On oral argument in the Court of Appeals, petitioner contended for the first time that she never received the notices of foreclosure.

mailing was not the sole means relied upon to give notice. The City published foreclosure notices once a week for six successive weeks in the City Record and in two newspapers circulated throughout Queens County. Admin. Code §11-406(a). Additionally, foreclosure notices were posted in the Queens County courthouse and in three other conspicuous locations in the Borough of Queens. Admin. Code §11-406(d). Second, the well-known inevitability of taxes and the consequences of not paying them are themselves likely to alert a tax delinquent property owner to the possibility of foreclosure. At the time of the commencement of the tax foreclosure proceeding in this case, petitioner had failed to pay property taxes for over four years and concedes receiving tax bills and other letters from the City apprising her of her delinquency. A person in petitioner's

position can reasonably be expected to know that foreclosure is imminent and to take the steps necessary to protect her interests. See Texaco v. Short, 454 U.S. 516, 532 (1982) ("persons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property."). Under these circumstances, notice by ordinary mail supplemented by publication and posting was reasonably calculated to inform the parties affected.

Nor were petitioner's due process rights violated because she was never notified of entry of the foreclosure judgment or, later, of the imminent lapse of her remedies of mandatory or discretionary release. Due process only requires notice of "the pendency of the action" and an opportunity to respond. Mullane, supra, 339 U.S. at 314; Mennonite Board of Missions v. Adams,

supra, 462 U.S. at 795;[12] see Greene v. Lindsey, supra, 456 U.S. at 451.

Here, the City discharged its obligation by sending notice that was reasonably calculated to inform affected parties that the foreclosure action had been initiated and apprise them of the availability of the redemption and release remedies.[13] The City was not thereafter required to send additional notices as each step in the foreclosure proceeding was completed or when the release periods were about to

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[12]This Court in Mennonite, in light of the disposition reached in that case, declined to consider the issue of whether a mortgagee is constitutionally entitled to notice of its right to redeem the property. 462 U.S. at 800, footnote 6.

[13]Indeed, petitioner availed herself of the right to seek release by filing an application within the two-year discretionary release period pursuant to sections 11-407 and 11-424 of the Administrative Code. However, as noted, her application was denied by the Board of Estimate.

lapse. Cf. Texaco, Inc. v. Short, 454 U.S. 516, 536 (1982) (given presumed knowledge that their unused mineral interests would lapse unless they filed a statement of claim, owners of such interests had no constitutional right to be advised that the 20-year period of nonuse was about to expire).

By the time the mandatory release period lapsed in July 1984, petitioner had failed to pay taxes on her property for over seven years; by the time the discretionary release period lapsed in March 1986, she had been tax delinquent for almost ten years. Under these circumstances, the likelihood of the City proceeding against petitioner's property was so certain that additional written notice of deadlines to avoid foreclosure was unnecessary. See Wakefield v. Northern Telecom, Inc., 813 F.2d 535, 542-42 (2d Cir. 1987) (failure of court clerk

to mail notice to litigants of the filing of an order in the district court does not relieve a party from complying with deadlines running from the filing of such an order because a party to litigation ought to anticipate the filing of such orders).

Petitioner's reliance on Tulsa Collection Service v. Pope, supra, 108 S.Ct. 1340, is wholly misplaced. Tulsa holds only that due process required actual mail notice to reasonably ascertainable creditors of an estate in probate that the two-month nonclaim statute, which was not self-executing, had began to run. Here, petitioner was given actual mail notice of the pendency of the tax foreclosure proceeding involving her property and, at that time, was advised of her redemption and release rights. Due process does not require that she be given additional notice that the time period for seeking mandatory release was

about to lapse. Tulsa does not require such additional notice.

(4)

For all the foregoing reasons, the Court of Appeals, following applicable precedents in this Court, properly held in this case that notice to petitioner by first-class mail of the pendency of a tax foreclosure proceeding involving her property, in addition to notice by publication and posting, fully comported with due process. Petitioner's constitutional claim is insubstantial and the petition should be denied.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

December 12, 1988

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